

REMARKS

Claim 1 remains in the case.

With this amendment, the subject matter of Claim 2 has been incorporated with Claim 1.

Old Claim 2 stood rejected under 35 U.S.C. 103(a) as being unpatentable over Slutz in view of Sylvester et al or Haddon. In this regard, the reference of Sylvester relates to a clamp for attaching plow shanks to a tool bar of an agricultural implement with the use of at least one wedge means. A clamp is designed so it can be attached quickly without the use of the bolts and the like.

Haddon relates to a portable power tool.

It is respectfully submitted that neither of the above secondary references even remotely relate to an apparatus such as proposed by Applicant. Accordingly, it is respectfully suggested that these references cannot be combined as there would be no teaching in any of the references of the desirability of so doing.

It has been established in the jurisprudence that the Examiner may not resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. It is believed that the following jurisprudence is pertinent to the issues under consideration herein. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

It is respectfully submitted that the evidence adduced by the Examiner is insufficient to establish a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established

by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Linter, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on 35 U.S.C. 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art.

It is also well established that it is not sufficient to pick and choose from different prior art references to show that the individual features per se are known in the art. Again, from Section 2143.01 of MPEP,


The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (Claims were directed to an apparatus for producing an aerated cementitious composition by drawing air into the cementitious composition by driving the output pump at a capacity greater than the feed rate. The prior art reference taught that the feed means can be run at a variable speed, however the court found that this does not require that the output pump be run at the claimed speed so that air is drawn into the mixing chamber and is entrained in the ingredients during operation. Although a

prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 16 USPQ2d at 1432.). See also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (flexible landscape edging device which is conformable to a ground surface of varying slope not suggested by combination of prior art references).

A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

It is respectfully submitted this application is now in order for allowance, and such action is respectfully requested.

Respectfully,

  
Eric Fincham  
Reg. No. 28,201

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the Commissioner for Patents, Alexandria, VA 22313-1450 at Fax No. (571) 273-8300 on the date set forth below.

  
Eric Fincham, Reg. 28,201

April 24, 2006  
Date